

# United States Bankruptcy Court

## Western District of Michigan

One Division Ave., NW

Room 200

Grand Rapids, MI 49503

**IN RE:** Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

**Marlene Carol Wagner**  
c/o: Deborah Louise  
Godlewski  
Guardian and Conservator  
511 Lincoln Lawns N. W.  
Grand Rapids, MI 49534  
SSN: xxx-xx-6044

**Debtor(s)**

**Case Number 06-01415-jrh**

**Chapter 7**

**Honorable Jeffrey R. Hughes**

### NOTICE OF HEARING

#### **TRUSTEE'S MOTION TO SELL DEBTOR'S RESIDENCE, FREE AND CLEAR OF LIENS, FOR SETTLEMENT OF JUDGMENT LIEN, AND FOR AUTHORIZATION TO MAKE PARTIAL DISBURSEMENT OF SALE PROCEEDS**

The above motion has been filed with the Bankruptcy Court. Your rights may be affected. **You should read these papers carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)**

If you want the court to consider your views on this matter, attend the hearing scheduled to be held before the Hon. Jeffrey R. Hughes on July 13 , 2006 at 1:30 pm at One Division Ave, N.W., 3rd Floor, Courtroom C, Grand Rapids, MI 49503

You or your attorney may wish to file a response explaining your position. Such response should be received at least three business days prior to the scheduled hearing. A copy should also be served upon the party who has filed the motion to his/her attorney. **Please refer to Administrative Order 2004-06 (Mandatory Electronic Filing), effective January 1, 2005, for practices and procedures for filing pleadings with the Court.**

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

**PLEASE NOTE:** NOTICE IS HEREBY GIVEN that the court may, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be obtained at the Clerk's office from the court files or docket.

This Notice has been returned to Larry A. Ver Merris . It is Larry A. Ver Merris (s/'s) responsibility to ensure that service of this Notice and the referenced Motion is made upon the appropriate parties not less than twenty (20) days prior to the date of hearing. (sc)



DANIEL M. LAVILLE  
CLERK OF BANKRUPTCY COURT

**Dated:** June 14, 2006

/S/ \_\_\_\_\_

Shelli Combs  
Deputy Clerk



**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

In the Matter of: \_\_\_\_\_

Marlene Carol Wagner,

Debtor.  
\_\_\_\_\_ /

Case No. HG 06-01415

(Chapter 7)

Case Filed: April 4, 2006

**TRUSTEE'S MOTION TO SELL DEBTOR'S RESIDENCE,  
FREE AND CLEAR OF LIENS, FOR SETTLEMENT OF JUDGMENT LIEN, AND FOR  
AUTHORIZATION TO MAKE PARTIAL DISBURSEMENT OF SALE PROCEEDS**

NOW COMES JAMES W. HOERNER, Chapter 7 Trustee herein, by and through his attorneys, Day & Sawdey, P.C., pursuant to Bankruptcy Code § 363 and Federal Rules of Bankruptcy Procedure 2002, 6004, and 9019, and shows unto this Court as follows:

1. Your Movant is the duly-appointed, qualified and acting Chapter 7 Trustee in the above-entitled case, which was commenced by the Debtor through the filing of a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on April 4, 2006.

2. Included among the assets in this estate is the Debtor's residence (the "residence") located at 2445 Bristol Ave., N.W., Walker, Michigan 49544, bearing PPN: 41-13-10-277-017, and legally described as:

The North 100 feet of the East 435.6 feet of the South ½ of the Southeast ¼ of the Southeast ¼, of the Northeast ¼, Section 10, Town 7 North, Range 12 West, City of Walker, Kent County, Michigan.

3. The residence is owned solely by the Debtor and has a scheduled value of \$125,200. The Trustee has had said home appraised and believes that the same would likely command a market value of \$116,990.00 - \$124,227.00. Consequently, he has listed the same for sale with Greenridge Realty, Inc. for \$119,900.00.

4. Joel Janz and Kevin M. Letson, single men, of 1024 South Jackson, Bay City, Michigan 48708 (hereinafter "Janz and Letson"), have offered to purchase the Debtor's residence for the sum of \$119,900.00, pursuant to the terms of a West Michigan Regional Purchase Agreement (the "Purchase Agreement"), a copy of which is on file with this Court and is available for examination by any interested party between the hours

of 8:00 a.m. and 4:00 p.m., Monday – Friday. The sale of such residence will be made pursuant to the terms thereof as well as the terms recited herein. To the extent there is a conflict in such provisions, the terms of this Motion will prevail.

5. The proposed purchaser has no known relationship to the Trustee or his attorneys, to the Debtor or any person affiliated with the Office of the United States Trustee, or to the Bankruptcy Judge who might approve such sale.

6. The above-described residence is subject to a judgment lien in favor of National Check Bureau, Inc. upon which judgment is owed approximately \$36,763.50 at this time. However, National Check Bureau, Inc. never made personal service of the underlying Summons and Complaint upon the Debtor, who the Trustee is informed, was likely legally incapacitated at all times relevant, and for whom a guardian and conservator has been appointed by the Kent County Probate Court. Consequently, it is the Trustee's position that such judgment lien is in bona fide dispute per 11 USC § 363(f)(4). As opposed to having the Trustee take action to have said judgment and judgment lien set aside for lack of proper service, the Trustee has negotiated a settlement thereof whereby he would pay to National Check Bureau, Inc., out of the sale proceeds, the sum of \$27,500.00 in full satisfaction of its judgment, whereupon its judgment lien shall be discharged. Such settlement will relieve the estate of the time and expense of having to litigate the propriety of such judgment and judgment lien and free up additional funds for other creditors herein.

7. Other than the foregoing judgment lien, the residence is held free and clear of liens, save for the Debtor's \$30,000.00 claim of exemption thereon, which has been allowed.

8. All real property taxes and assessments due in 2005 and before are seller's responsibility. Real property taxes due for 2006 will be pro-rated to the date of closing on a calendar-year basis with the seller being responsible for that portion of taxes due from January 1, 2006 to the closing date. Assessments due on or before June 5, 2006 are seller's responsibility. The balance of the taxes and assessments for 2006 are buyer's responsibility.

9. Out of the sale proceeds the Trustee proposes to disburse the following amounts to the following parties at the time of closing on such sale:

- a. Payment for the premium for a Standard ALTA Owners Policy of Title Insurance in the amount of the purchase price.
- b. Payment of real estate taxes and assessments, as described above.
- c. Payment of real estate transfer taxes and revenue stamps due on such sale.
- d. Payment of real estate sales commission to Greenridge Realty, Inc. of seven percent (7%) of the purchase price, or \$8,393 based upon a sales price of \$119,900.
- e. Payment for the premium for a one (1) year home protection plan.
- f. Payment of one-half (1/2) of all closing costs and all miscellaneous recording costs attributable to seller.
- g. Payment to the Debtor of the sum of \$30,000 on her allowed claim of exemptions.
- h. Payment of up to \$500 as a cost of repairs to buyer as a condition of buyer's financing.
- i. Payment of \$27,500 to National Check Bureau, Inc. in full settlement of its judgment lien.

After payment of the aforesaid amounts, the balance of the sale proceeds will be held by the Trustee pending further order of this Court.

10. Prospective buyers may make arrangements for examination and inspection of this property by contacting Trustee's counsel at the address and telephone number which appears at the foot of this Motion.

11. The sale of this property shall be made on an "AS-IS, WHERE-IS" basis, without representation or warranty, express or implied, of any kind, nature or description, including, without limitation, any warranty by description or of merchantability, usability, habitability, or of fitness for any particular purpose. The seller shall not be required to inspect or test or report on the condition of the property being sold, or of the existence of any possible defects in the same, except as may be required by law, and any defects which may be revealed by a commitment for title insurance.

12. Except for easements and restrictions of record, the residence shall be sold FREE and CLEAR of liens or of claims thereon, with the interest of any party asserting a lien or claim against the residence being removed therefrom and attaching to the sale proceeds in the same order of rank, validity and priority as it presently may exist against such property.

13. The Trustee shall convey his interest in the residence to the buyer by way of a Trustee's Deed, which is in the nature of a quit-claim deed. Likewise, his interest in any attached personal property (including the stove, refrigerator, washer and dryer) shall be conveyed by a suitable Trustee's Bill of Sale. Neither the Trustee's Deed nor the Trustee's Bill of Sale shall contain any warranty language.

14. Any costs for tests or inspections requested or desired by buyer shall be borne and otherwise paid by buyer, at buyer's expense. These include, but are not limited to, a survey, pest inspection, building inspection, well/septic inspection, percolation tests, radon test, or any other inspections of any nature.

15. The residence will be offered for sale in one (1) lot, on a cash basis, with bidding commencing at the offer of Janz and Letson; i.e., \$119,900. Thereafter, bids will be taken in increments of no less than \$2,000, with the initial offer to be at least \$125,000. Contingent bids will not be received. Before the Trustee will accept higher and competing offers, he will require any potential bidder to provide proof of their financial ability to make an offer of \$125,000 or more by way of a bank letter of credit or similar document.

16. After the sale has been approved by the Bankruptcy Court, the buyer shall, within three (3) days, sign a Buy/Sell Agreement in accordance with the terms recited herein, or an addendum to the Purchase Agreement if Janz and Letson are the successful buyer, but for a higher purchase price, as the case may be.

17. The buyer shall be required to deposit with the Trustee the sum of \$1,000, representing an earnest money deposit against the purchase price, immediately after the sale is orally confirmed by the Bankruptcy Court. Such earnest money deposit is subject to forfeiture, as seller's liquidated damages, if closing does not occur due to the fault of the buyer. If seller cannot seasonably close, then buyer's earnest money deposit shall be returned and buyer shall have no further claims against seller or this estate. The balance of the

purchase price is to be paid at closing, which closing is to be scheduled as soon thereafter as is practicable, but by no later than July 15, 2006, unless extended pursuant to agreement of the parties.

19. Occupancy and use of the residence will be delivered to the buyer at the time of closing.

20. All expenses of custody, protection and insurance of this property, as well as the expenses of sale, including administrative and all legal expenses of the bankruptcy proceeding relating to the protection and sale of said real property shall be charged against the sale proceeds with priority over all claims, save for those identified in paragraph 9. above, upon which distributions are to be made, per 11 USC § 506(c).

21. Your Movant believes that the sale of such residence, as aforesaid, or to a higher bidder on such terms, is in the best interest of the creditors in this estate and should be approved. Likewise, he believes the settlement of the judgment lien of National Check Bureau, Inc., for \$27,500 is in the best interest of creditors and should be approved.

WHEREFORE, YOUR MOVANT PRAYS that creditors herein and other interested parties be required to object or otherwise show cause, on a time and date certain, why the above-described residence should not be sold, as aforesaid, to Janz and Letson, or to such other party who might submit a higher offer thereon; why the settlement of the judgment lien of National Credit Bureau, Inc. should not be approved; why the Trustee should not be allowed to disburse, out of the sale proceeds at closing, the amounts recited above, together with any applicable interest or penalties thereon; why he should not be allowed to sign the Purchase Agreement and any other necessary transfer and closing documents; and why he should not have such other and further relief as this Court might deem just, equitable and proper.

Dated: June 14, 2006

DAY & SAWDEY, P.C.  
Attorneys for Trustee

By \_\_\_\_\_/s/\_\_\_\_\_  
Larry A. Ver Merris (P-29093)

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